

EXHIBIT C

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CIVIL ACTION NO. 4:09-CV-3-BR

BENJAMIN G. HINES, JR.,)	VIDEOTAPED
)	
PLAINTIFF,)	D-E-P-O-S-I-T-I-O-N
)	
VS.)	OF
)	
TRIAD MARINE CENTER, INC., ET)	MICHAEL NEIL WAGONER
AL,)	
)	
DEFENDANTS.)	

* * * * *
NOVEMBER 19, 2009, AT COASTAL COURT REPORTING AGENCY, INC., 136
EAST CHATHAM STREET, NEWPORT, NORTH CAROLINA

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF - STEVENSON L. WEEKS, ESQ.

WHEATLY, WHEATLY, WEEKS & LUPTON, P.A.
ATTORNEYS AT LAW
710 CEDAR STREET
BEAUFORT, NC

CHARLES R. HARDEE, ESQ.

HARDEE AND HARDEE
ATTORNEYS AT LAW
202 EAST ARLINGTON BOULEVARD
GREENVILLE, NC 27858

FOR THE DEFENDANTS - J. LAWSON JOHNSTON, ESQ.
JOHN T. PION, ESQ.

DICKIE, MCCAMEY & CHILCOTE, P.C.
ATTORNEYS AT LAW
TWO PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

COURT REPORTER - SHERRY HOPKINS

COASTAL COURT-REPORTING AGENCY, INC.
P.O. BOX 788
NEWPORT, NORTH CAROLINA 28570
TEL: (252) 223-4045
FAX: (252) 223-3663

1 EXPERIENCE IS IN BOATING, WHAT KIND OF BOATS YOU'VE OPERATED,
2 WHERE YOU'VE OPERATED?

3 A. I'M ACTUALLY NOW A COAST GUARD CAPTAIN. I'VE
4 BEEN AROUND BOATS MY WHOLE LIFE, I GREW UP FISHING WITH MY
5 DAD, WATERSKIING, AND ALL THAT. I ACTUALLY OWNED A BOAT
6 BEFORE I HAD A DRIVER'S LICENSE, AND AS SOON AS I HAD MY
7 DRIVER'S LICENSE, I WAS PULLING A BOAT TO DIFFERENT PLACES.
8 SO I'VE ALWAYS BEEN AROUND THE WATER, ALWAYS BEEN AROUND THE
9 OCEAN AS WELL, TOOK YEARLY TRIPS DOWN TO THE TOWN, TO THE
10 BEACHES AND STUFF WHERE WE OPERATED A BOAT THERE.

11 Q. SO YOU'RE A PRETTY EXPERIENCED BOATER?

12 A. UH-HUH.

13 Q. YES?

14 A. YES.

15 Q. DO YOU OWN A BOAT NOW?

16 A. YES.

17 Q. ACCORDING TO THE STATEMENT, IT WAS A 22 FOOT
18 LIGHT TACKLE?

19 A. IT'S A 22 FOOT CENTER CONSOLE. IT'S A BAY BOAT,
20 SO YOU CAN GET IT IN THE FLATS OR TAKE IT OFFSHORE, AND I
21 BOUGHT THAT BOAT PREVIOUS TO THE TEST DRIVE WITH BEN.

22 Q. WHEN, MARCH OF '06?

23 A. YES, I BOUGHT IT IN FEBRUARY.

24 Q. BEFORE THAT, DID YOU OWN A BOAT?

25 A. YES, I'VE OWNED THREE OR FOUR BOATS.

1 Q. WERE THEY ALL POWERBOATS?
2 A. UH-HUH.
3 Q. YES?
4 A. YES, AND A KAYAK.
5 Q. HOW ABOUT YOUR EXPERIENCE IN THE BEAUFORT INLET,
6 HOW MANY YEARS AND HOW OFTEN WOULD YOU SAY THAT, BEFORE THIS
7 ACCIDENT OCCURRED, WHAT YOUR EXPERIENCE WOULD HAVE BEEN
8 THERE?
9 A. LIKE I SAID, WE CAME DOWN REGULARLY. I WOULD
10 SAY EVERY YEAR OR SO WE WOULD COME DOWN AT LEAST ONCE, MOST
11 OF THE TIME WE WENT OUT OF BARDENS INLET OUT ON HARKERS
12 ISLAND, BUT I'VE TAKEN A 14 FOOT JON BOAT THREE MILES
13 OFFSHORE OUT OF THAT INLET WHEN I WAS TWENTY YEARS OLD. SO
14 I'VE BEEN AROUND THAT INLET, AND THEN EVER SINCE WE MOVED
15 HERE, I'VE BEEN OUT NUMEROUS . . .
16 Q. NUMEROUS TIMES?
17 A. HUNDREDS OF TIMES.
18 Q. SO YOU'RE FAMILIAR WITH THE INLET, AND
19 SHACKLEFORD ISLAND, AND FORT MACON, AND SO FORTH?
20 A. YES.
21 Q. MISTER WAGONER, WHAT WE'RE GOING TO DO IS, WE
22 HAVE THE AUDIO VERSION OF THE STATEMENT THAT YOU GAVE SHARI
23 NELSON ON MARCH 29TH, '06. WE'RE GOING TO ASK THE COURT
24 REPORTER OR VIDEOGRAPHER, RATHER, TO PLAY THAT SO THAT WE CAN
25 ALL LISTEN TO IT. IT'S ABOUT SEVEN MINUTES LONG, IF THAT'S

1 OKAY?

2 A. SURE.

3 MR. WEEKS: I'M GOING TO OBJECT TO THE PLAYING
4 OF THE TAPE AT THIS TIME.

5 (DEFENDANTS' EXHIBIT [30] WAS PLAYED ALOUD.)

6 Q. MISTER WAGONER, WE'VE JUST LISTENED TO THE
7 STATEMENT, I BELIEVE, THAT YOU GAVE SHARI NELSON, IS THAT
8 CORRECT?

9 A. YES.

10 Q. THAT WAS YOUR VOICE?

11 A. YES.

12 Q. I'D LIKE TO GO OVER SOME OF THE STATEMENT WITH
13 YOU, AND ACTUALLY, WE'VE HAD IT MARKED AS EXHIBIT [25], THE
14 TRANSCRIBED STATEMENT, AND I WONDER IF YOU COULD JUST TAKE A
15 LOOK AT THAT FOR A MINUTE AND JUST TELL US WHETHER OR NOT
16 THAT WAS THE STATEMENT THAT YOU GAVE TO SHARI NELSON?

17 A. (PAUSE - PERUSES EXHIBIT) - YES.

18 Q. JUST FOR THE RECORD, THAT'S A FOUR PAGE
19 STATEMENT. AS I UNDERSTAND IT, DOCTOR HINES HAD ASKED YOU TO
20 GO ON THIS TEST DRIVE WITH HIM ON MARCH 21ST, 2006?

21 A. YES, HE CALLED ME AND SAID HE WAS GOING TO TEST
22 DRIVE THE BOAT, AND ASKED ME IF I WANTED TO GO AND I SAID,
23 SURE.

24 Q. I'M GOING TO ASK YOU SOME QUESTIONS, I DON'T
25 KNOW IF YOU'LL REMEMBER OR NOT, BUT THAT'S FINE. DO YOU

1 REMEMBER WHEN IT WAS THAT HE CALLED YOU, WAS IT THE DAY
2 BEFORE OR WAS IT THAT DAY?

3 A. I BELIEVE IT WAS THAT DAY.

4 Q. YOU HAD SAID IN THE STATEMENT THAT YOU HAD SOME
5 INTEREST IN MAYBE RIDING THAT BOAT TOO?

6 A. YES, I WAS JUST MORE CURIOUS THAN ANYTHING. I
7 HADN'T RIDDEN IN THAT STYLE OF BOAT AND I WAS JUST CURIOUS TO
8 SEE HOW IT WOULD RIDE.

9 Q. DOCTOR HINES - WHAT WAS THE PURPOSE FOR HIS
10 ASKING YOU TO GO ALONG WITH HIM?

11 A. I COULDN'T SAY THAT. I MEAN, I KNEW HE WAS
12 LOOKING FOR A BOAT, AND I WAS TELLING HIM THAT I WAS PLEASED,
13 AT THE TIME, I WAS PLEASED WITH BOATS UNLIMITED AND SO . . .

14 Q. DID HE JUST KIND OF WANT YOUR OPINION, MAYBE,
15 ABOUT THE BOAT?

16 A. I COULDN'T SAY.

17 Q. THAT'S FINE. THE WEATHER CONDITIONS THAT DAY,
18 DO YOU RECALL?

19 A. FROM THE BEST OF WHAT I REMEMBER, IT WASN'T A
20 BEAUTIFUL DAY. IT WAS NOT A SUNSHINE DAY, IT WAS KIND OF A
21 GRAY, OVERCAST DAY, I DO NOT THINK IT WAS RAINING, IT WAS A
22 WINDY DAY.

23 Q. NOTHING UNUSUAL FOR . . .

24 A. FOR DOWN HERE, ABSOLUTELY NOT.

25 Q. OKAY. I DON'T KNOW IF YOU REMEMBER, LIKE, WIND

1 DIRECTION OR ANY OF THAT, DO YOU HAVE ANY IDEA ABOUT THAT?

2 A. IT SEEMS LIKE IT WAS FROM THE NORTH, BUT I'M
3 NOT - I COULDN'T - I WOULDN'T WANT TO SWEAR TO THAT. I KNOW
4 IT WAS EITHER BLOWING STRAIGHT INTO THE INLET OR STRAIGHT
5 OUT, BECAUSE THE WAVES WERE FROM THAT DIRECTION WHEN WE WERE
6 GOING STRAIGHT.

7 Q. DO YOU REMEMBER THE HEIGHT OF THE WAVES?

8 A. I WOULD SAY 2 TO 3 FEET.

9 Q. NOTHING UNUSUAL FOR . . .

10 A. NOT FOR THAT INLET, NO.

11 Q. YOU'D BEEN OUT IN THAT INLET, YOU SAY, MANY
12 TIMES?

13 A. MANY TIMES.

14 Q. HAD YOU BEEN IN THOSE SAME CONDITIONS MANY
15 TIMES?

16 A. YES, AND WORSE.

17 Q. YOU WEREN'T AFRAID TO GO OUT IN THE BOAT THAT
18 DAY?

19 A. NO.

20 Q. IT WASN'T ONE OF THOSE DAYS WHERE YOU'D SAY, I'M
21 NOT GOING OUT IN THOSE CONDITIONS, IT'S TOO . . .

22 MR. WEEKS: I'M GOING TO OBJECT TO THE
23 CONTINUOUS LEADING.

24 MR. JOHNSTON: I DON'T KNOW IF I LED YET. THAT
25 WAS A LEADING QUESTION, I'LL AGREE, I'LL WITHDRAW THAT

1 QUESTION.

2 Q. YOU DIDN'T HAVE ANY OBJECTION OR DID YOU HAVE
3 ANY OBJECTION TO GOING OUT THAT DAY?

4 A. NO.

5 Q. DO YOU - YOU WERE FRIENDS WITH DOCTOR HINES?

6 A. YES.

7 Q. AND STILL TODAY?

8 A. YES.

9 Q. AND YOU'RE STILL LIVING AT THAT ADDRESS?

10 A. YES.

11 Q. AT OLDE TOWNE?

12 A. YES.

13 Q. CAN YOU JUST GIVE A VERY BRIEF DESCRIPTION OF
14 THE BOAT?

15 A. THE BOAT THAT WE WERE ON THAT DAY?

16 Q. YES?

17 A. I WANT TO SAY IT WAS AROUND 25 FEET, HAS A DEEP-
18 V, CENTER CONSOLE, DIDN'T RIDE VERY WELL, JUST KIND OF
19 A - IT'S VERY SIMILAR TO THE BOAT THAT BEN ENDED UP BUYING,
20 BUT A DIFFERENT BRAND.

21 Q. WHAT BRAND DID HE BUY, DO YOU KNOW?

22 A. I DO NOT KNOW.

23 Q. DO YOU KNOW WHEN IT WAS THAT HE BOUGHT THAT
24 BOAT?

25 A. NOT LONG AFTER THAT TEST - OR WITHIN THAT YEAR.

1 Q. AS FAR AS THE TEST DRIVE, DO YOU REMEMBER HOW
2 LONG IT WAS FROM THE TIME YOU GOT IN THE WATER UNTIL, LET'S
3 SAY, THE ACCIDENT OCCURRED?

4 A. LESS THAN AN HOUR.

5 Q. DO YOU KNOW JUST GENERALLY WHERE YOU WENT THAT
6 DAY?

7 A. WE LEFT OLDE TOWNE, HEADED TOWARD THE INLET.
8 LIKE I SAID, BEN WAS DRIVING, AND BEN BASICALLY TOOK THE BOAT
9 INSIDE INLET AREA, ALL AROUND BEHIND, KIND OF BEHIND
10 SHACKLEFORD, YOU KNOW, THE FORT MACON AREA, INLAND OF THE
11 INLET.

12 Q. WHEN THIS INCIDENT OCCURRED, WHERE WERE YOU WHEN
13 IT ACTUALLY OCCURRED, THE ACCIDENT?

14 A. WHEN THE ACCIDENT OCCURRED, JOHN WAS DRIVING,
15 AND WE WERE RIGHT IN THE MIDDLE OF THE INLET.

16 Q. DO YOU KNOW WHAT THE DEPTH WOULD HAVE BEEN
17 THERE?

18 A. IN THE CHANNEL THERE, THAT'S AROUND 50 FEET,
19 PROBABLY.

20 Q. WHEN THE INCIDENT OCCURRED, I KNOW WHAT YOU SAID
21 ABOUT THE WAVE, HITTING THE WAVE, BUT WHEN THE INCIDENT
22 OCCURRED, WERE YOU ON PLANE?

23 A. NO. I THINK WE WERE PROBABLY GOING UNDER TWENTY
24 MILES AN HOUR, AND, NO, I WOULDN'T CONSIDER IT FULL PLANE IF
25 WE WERE TO - I FELT LIKE IF WE WERE GOING ON FULL PLANE, WE

1 WOULD HAVE BEEN BOUNCING ALONG THE TOP OF THE WAVES, AND WE
2 WERE TAKING EACH WAVE INDIVIDUALLY.

3 Q. WOULD YOU - THE WAY THAT JOHN WAS OPERATING THE
4 BOAT, WAS HE DOING ANYTHING WRONG, IN YOUR OBSERVATIONS?

5 MR. WEEKS: OBJECTION.

6 Q. YOU CAN ANSWER?

7 A. NO, I DON'T THINK HE WAS DOING ANYTHING WRONG.

8 Q. DID YOU FEEL UNSAFE AT ANY TIME?

9 A. NO.

10 Q. DID YOU FEEL AT RISK FOR INJURY AT ANY TIME?

11 MR. WEEKS: OBJECTION TO THE LEADING.

12 Q. YOU CAN ANSWER?

13 A. NO, I WAS HOLDING ON AND WATCHING WHERE WE WERE
14 GOING. I WAS HOLDING ON, BUT THAT WOULD BE THE NORMAL WHEN
15 WE LEAVE IN A BOAT, THAT I'M LEAVING THE INLET.

16 Q. DO YOU RECALL WHERE YOU WERE STANDING?

17 A. I WAS STANDING BEHIND THE CONSOLE OR BEHIND
18 THE - THAT BOAT HAS A CONSOLE WHERE THE STEERING WHEEL IS,
19 AND THEN IT HAS LIKE A LEANING POST WHERE THE DRIVER COULD
20 BE, AND I WAS STANDING BEHIND THAT, HOLDING ON TO THE
21 HANDRAILS IN THE BACK OF THE BOAT.

22 Q. WHERE WAS DOCTOR HINES WHEN HE FELL?

23 A. HE WAS STANDING TO THE LEFT OF THE - OF JOHN,
24 FURTHER UP IN THE BOAT.

25 Q. WERE THERE ANY OTHER BOATS OUT THAT DAY?

1 A. THERE WERE SOME OTHER BOATS. IT WAS DURING THE
2 WEEK, SO IT WASN'T A HUGE BOATING DAY ANYWAY, AND IN MARCH,
3 THE SAME APPLIES, BUT I DO REMEMBER SEEING OTHER BOATS.

4 Q. COULD YOU DESCRIBE THE WAVE THAT YOU HIT, THE
5 MANNER IN WHICH YOU HIT THE WAVE, AT WHAT ANGLE?

6 A. WE WERE GOING PERPENDICULAR OUT THE INLET AND
7 THE WAVES WERE COMING STRAIGHT IN, BECAUSE THE TIDE WAS GOING
8 OUT, THE WAVES GET SHORTER. SO WE WERE - EVERY WAVE WE HIT,
9 THE BOW OF THE BOAT WAS RAISING UP AND IT WAS HITTING HARD ON
10 THE WATER, AND THAT PARTICULAR WAVE WAS, TO ME, ABOUT THE
11 SAME AS THE PREVIOUS ONES WE HAD HIT, BUT THAT PARTICULAR
12 ONE, HE FELL.

13 Q. WHEN YOU SAY THE PREVIOUS ONES, CAN YOU SAY FOR
14 MAYBE HOW LONG A PERIOD OF TIME, WHETHER IT WAS MINUTES OR
15 LESS THAN A MINUTE THAT YOU HIT THESE PREVIOUS WAVES?

16 A. I DON'T RECALL, BUT WE HAD HIT SEVERAL PRIOR TO
17 THAT.

18 Q. WHEN YOU SAID THAT IT WAS JUST ONE OF THOSE
19 THINGS, IT WAS JUST AN ACCIDENT?

20 A. TO ME, IT WAS JUST AN ACCIDENT. I DON'T - YOU
21 KNOW, COULD JOHN HAVE SAID, HEY, HOLD ON, MAYBE, BUT COULD
22 BEN HAVE BEEN HOLDING ON, MAYBE. IT'S JUST ONE OF THOSE
23 THINGS THAT HAPPENS.

24 Q. HAD YOU BEEN EVER BOATING WITH DOCTOR HINES
25 BEFORE THIS ACCIDENT?

1 A. I DON'T THINK SO.

2 Q. DID YOU SEE THE MANNER IN WHICH DOCTOR HINES
3 FELL, WERE YOU LOOKING?

4 A. NO, NOT THAT I COULD SAY.

5 Q. YOU COULDN'T SAY THAT HE WAS THROWN UP IN THE
6 AIR OR ANYTHING?

7 A. NO, I COULDN'T.

8 Q. ARE YOU FRIENDS WITH ANY OF THE POPES, THE POPES
9 THAT OWN BOATS UNLIMITED?

10 A. CHRIS POPE WAS WHO I BOUGHT MY BOAT FROM. I
11 ACTUALLY WOULD HAVE SAID YES AT THE TIME OF THIS. ACTUALLY,
12 I HAVE NOT REALLY AGREED WITH SOME OF THE THINGS THEY DID TO
13 MY BOAT SINCE THEN, AND SO I WILL NOT TAKE MY BOAT THERE ANY
14 LONGER.

15 Q. BEFORE THE ACCIDENT OCCURRED, YOU BOUGHT YOUR
16 BOAT AROUND WHAT TIME FRAME?

17 A. I BOUGHT IT IN THE WINTER, IN DECEMBER.

18 Q. OF '05?

19 A. UH-HUH. YES, I'M SORRY.

20 Q. SO THAT WOULD HAVE BEEN, LIKE, SEVERAL MONTHS
21 BEFORE THIS ACCIDENT WE'RE HERE FOR?

22 A. RIGHT.

23 Q. HAD YOU EVER SOCIALIZED WITH CHRIS POPE?

24 A. WE HAD BEEN - THIS IS PRIOR TO THAT, HE HAD
25 TAKEN ME FISHING A COUPLE OF TIMES, BASICALLY TEST DRIVING

1 THE BOAT THAT I ENDED UP PURCHASING OR A BOAT LIKE I WAS
2 PURCHASING, AND I'D SEE HIM OUT EVERY ONCE IN A WHILE, BUT
3 THAT'S BASICALLY IT.

4 Q. WHEN YOU SAY YOU'D SEE HIM OUT, WHAT DO YOU MEAN
5 BY THAT?

6 A. I SAW HIM AT THE BIG ROCK BARBECUE AND A COUPLE
7 OTHER INSTANCES, I'VE JUST SEEN HIM AROUND TOWN.

8 Q. BUT YOU WEREN'T THERE WITH HIM?

9 A. NO.

10 Q. OR DIDN'T HOOK UP WITH HIM WHEN YOU WERE THERE?

11 A. NO.

12 Q. ON THESE TEST RUNS THAT CHRIS POPE WENT OUT WITH
13 YOU ON, DO YOU REMEMBER ABOUT HOW MANY THERE WERE?

14 A. TWO, MAYBE THREE.

15 Q. WHERE DID YOU DO YOUR TEST RUNS?

16 A. TWO OF THEM WERE OUT IN THE INLET. ACTUALLY, WE
17 WENT TO CAPE LOOKOUT AND FISHED AROUND THE ROCK JETTY AT CAPE
18 LOOKOUT.

19 Q. WAS THE PURPOSE FOR YOU TO TEST THE BOAT?

20 A. TEST THE BOAT AND FISH.

21 Q. THEN, DO YOU RECALL WHEN THOSE TOOK PLACE,
22 KEEPING IN MIND YOU BOUGHT THE BOAT AROUND DECEMBER OF '05?

23 A. YES, THEY WOULD HAVE BEEN IN THE FALL, PROBABLY
24 IN THE SEPTEMBER/OCTOBER TIME FRAME.

25 Q. WERE THERE TWO OR THREE OCCASIONS, DO YOU RECALL?

1 A. I DON'T REMEMBER EXACTLY.

2 Q. AFTER YOU BOUGHT THE BOAT FROM CHRIS POPE, DID
3 YOU EVER SOCIALIZE WITH HIM AFTER THAT, AFTER, I GUESS,
4 DECEMBER OF '05, IF YOU BOUGHT IT THEN?

5 A. OTHER THAN WHEN I WAS TAKING MY BOAT IN TO GET
6 SERVICE, WE WOULD TALK HERE AND THERE, BUT NOT WHERE WE WOULD
7 ACTUALLY HANG OUT, I WOULD SAY.

8 Q. DID YOU EVER TALK TO CHRIS POPE ABOUT DOCTOR
9 HINES' ACCIDENT?

10 A. NEVER, ACTUALLY, AT ALL, NEVER.

11 Q. DID YOU TALK TO ANY OF THE POPES ABOUT DOCTOR
12 HINES' ACCIDENT?

13 A. NO.

14 Q. WHAT ABOUT JOHN HYDE, HAD YOU EVER SPOKEN TO
15 JOHN HYDE ABOUT THE ACCIDENT?

16 A. NEVER, I'VE NEVER SEEN HIM AGAIN.

17 Q. WAS THERE ANY DISCUSSION THE DAY OF THE ACCIDENT
18 WITH JOHN HYDE?

19 A. YES. I MEAN, HE WAS VISUALLY UPSET ABOUT THE
20 ACCIDENT AFTER THE TOOK BEN, AND, YOU KNOW, HE ASKED ME IF,
21 YOU KNOW, I THOUGHT IT WOULD BE OKAY TO CALL HIM AND SEE HOW
22 HE WAS DOING, AND I THOUGHT IT WOULD BE FINE. YOU KNOW, YOU
23 COULD JUST TELL THAT HE WAS, YOU KNOW, CONCERNED.

24 Q. DID YOU EVER TALK ABOUT THE FACTS OF THE
25 ACCIDENT, LIKE HOW IT OCCURRED OR ANYTHING LIKE THAT WITH

1 JOHN HYDE?

2 A. NO.

3 Q. ACTUALLY, DOCTOR HINES, WE TOOK HIS DEPOSITION
4 ON SEPTEMBER 29TH, THIS YEAR, AND I ASKED, ON PAGE 230 AND
5 231, IF DOCTOR HINES EVER TALKED TO YOU ABOUT HOW THE
6 ACCIDENT HAPPENED OR ABOUT THE ACCIDENT, AND HE SAID THAT
7 FRIENDSHIP MEANS MORE, I WOULDN'T. I WOULD NOT HAVE, HE
8 WOULD NEVER SPEAK TO YOU ABOUT THE ACCIDENT, HAS HE EVER
9 TALKED TO YOU ABOUT THE ACCIDENT?

10 A. NEVER, NEVER A WORD.

11 Q. I ALSO, LAST WEEK, TOOK THE DEPOSITION OF TOMMY
12 NELSON, DO YOU KNOW TOMMY NELSON?

13 A. YES.

14 Q. HE ALSO LIVES AT OLDE TOWNE YACHT CLUB?

15 A. YES.

16 Q. ARE YOU FRIENDS WITH HIM?

17 A. YES.

18 Q. HE SAID SOMETHING ABOUT - THAT YOU TOLD HIM
19 SOMETHING, AND I'M GOING TO TELL YOU WHAT HE SAID AND ASK YOU
20 WHAT YOUR RESPONSE IS. HE SAID THAT ABOUT A COUPLE OF MONTHS
21 AFTER DOCTOR HINES' ACCIDENT IN MARCH OF '06, THAT HE SAW YOU
22 ON THE DOCK AT OLDE TOWNE AND THAT YOU TOLD HIM THAT THE BOAT
23 WENT SIX FEET IN THE AIR.

24 MR. WEEKS: OBJECTION. I THINK YOU HAVE
25 MISSTATED MISTER NELSON'S TESTIMONY.

1 MR. JOHNSTON: YOU'RE FREE TO STATE IT IF YOU
2 LIKE, THAT'S WHAT HE SAID.

3 MR. WEEKS: I DON'T BELIEVE THAT'S A CORRECT
4 QUOTE.

5 Q. LET ME ASK IT THIS WAY, DID YOU MAKE ANY
6 STATEMENT TO TOMMY NELSON ABOUT HOW THIS ACCIDENT OCCURRED?

7 A. WE PROBABLY TALKED ABOUT IT, BUT I NEVER TOLD
8 HIM THAT THE BOAT WAS AIRBORNE.

9 Q. IS THAT BECAUSE THE BOAT NEVER WAS AIRBORNE?

10 A. AS FAR AS THE WHOLE BOAT BEING IN THE AIR, NO,
11 THE BOW OF THE BOAT WAS IN THE AIR, BUT THE BOAT IN ITS
12 ENTIRETY WAS NEVER AIRBORNE. THE BOW MAY HAVE BEEN SIX FEET
13 IN THE AIR, BUT THE BACK WAS NOT.

14 Q. OKAY. ARE YOU FRIENDS WITH JOHN HYDE?

15 A. I COULDN'T SAY THAT I AM. I SAW HIM A COUPLE OF
16 TIMES THERE AND NEVER SAW HIM SINCE THE ACCIDENT.

17 Q. BUT NEVER OUT SOCIALLY WITH HIM?

18 A. NO.

19 Q. DO YOU KNOW IF DOCTOR HINES EVER STRUCK HIS HEAD
20 IN THIS ACCIDENT?

21 A. I DON'T KNOW.

22 Q. DID HE EVER COMPLAIN TO YOU ABOUT SOME HEAD
23 INJURY AT ALL?

24 A. NO.

25 Q. WHEN YOU GAVE THIS STATEMENT BACK EIGHT DAYS

1 AFTER THE ACCIDENT, WAS THE ACCIDENT PRETTY FRESH IN YOUR
2 MIND?

3 A. YES.

4 MR. JOHNSTON: CAN WE TAKE JUST A TWO MINUTE
5 BREAK AND GO OFF THE RECORD?

6 (A BRIEF RECESS WAS TAKEN)

7 Q. MISTER WAGONER, JUST TO CONFIRM THE POSITION OF
8 THE PEOPLE ON THE BOAT AT THE TIME OF THE ACCIDENT, YOU SAID
9 JOHN HYDE WAS OPERATING THE BOAT, AND THEN DOCTOR HINES WAS
10 TO HIS LEFT?

11 A. YES.

12 Q. WOULD YOU HAVE BEEN BEHIND DOCTOR HINES?

13 A. I WAS BEHIND THE - JOHN, THE DRIVER.

14 Q. ON THE RIGHT?

15 A. UH-HUH.

16 Q. YOU HAVE TO SAY YES?

17 A. YES.

18 Q. YOU DIDN'T HAVE ANY - SO THERE WAS NO
19 OBSTRUCTION TO YOUR VIEWING DOCTOR HINES, NOTHING IN BETWEEN
20 YOU AND HIM, CORRECT?

21 A. RIGHT.

22 Q. AND NOTHING TO PREVENT YOU FROM SEEING HOW HE
23 FELL?

24 A. YES. THERE WAS NOTHING TO OBSTRUCT THAT OTHER
25 THAN I WASN'T LOOKING FOR HIM TO FALL.

1 Q. SO YOU DIDN'T SEE HIM FALL, HOW HE FELL, IF HE
2 CAME UP OUT OF THE BOAT OR ANY OF THAT?

3 A. I MEAN, HE WASN'T FLYING THROUGH THE AIR, BUT HE
4 JUST LOST HIS FOOTING AND FELL. I MEAN, I DIDN'T SEE
5 ANYTHING NORMAL EXCEPT FOR HIM GOING DOWN, BUT I COULDN'T
6 TELL YOU ANY DETAILS OF THAT.

7 MR. JOHNSTON: I DON'T HAVE ANY OTHER QUESTIONS,
8 BUT WE'D JUST LIKE TO MARK THE AUDIO TAPE THAT WE PLAYED HERE
9 THAT EVERYONE LISTENED TO AS EXHIBIT [26].

10 MR. WEEKS: I'VE MARKED SOME OTHER STUFF. SO IF
11 YOU NEED TO, MARK THAT AS EXHIBIT [30].

12 MR. JOHNSTON: THAT WOULD BE MARKED AS EXHIBIT
13 [30], THAT WOULD BE THE AUDIO TAPE OF MISTER WAGONER.

14 ON EXAMINATION CONDUCTED BY STEVENSON L. WEEKS,
15 ESQUIRE:

16 Q. MISTER WAGONER, MY NAME IS STEVE WEEKS, I'M ONE
17 OF THE ATTORNEYS REPRESENTING BEN HINES. YOU HAVE NOT SPOKEN
18 WITH ME BEFORE TODAY, HAVE YOU?

19 A. NO.

20 Q. HAVE YOU EVER SEEN ME BEFORE?

21 A. MAYBE.

22 Q. DID YOU REVIEW ANYTHING TO PREPARE FOR YOUR
23 DEPOSITION TODAY?

24 A. I DID SEE MY TRANSCRIPT.

25 Q. HOW DID YOU OBTAIN THAT?

1 A. THEY SENT IT TO ME - (INDICATING DEFENSE
2 COUNSEL) - I DON'T KNOW THEIR NAMES.

3 Q. SO YOUR STATEMENT WAS PROVIDED TO YOU TO REVIEW,
4 DID YOU REVIEW ANYTHING ELSE?

5 A. THE TAPE WAS SENT AS WELL, BUT THAT'S IT.

6 Q. HAVE YOU EVER GIVEN A DEPOSITION BEFORE TODAY?

7 A. NO.

8 Q. I'M JUST GOING TO BE ASKING YOU SOME QUESTIONS,
9 I'M NOT GOING TO BE TRYING TO TRICK YOU, I'M JUST TRYING TO
10 LEARN SOME INFORMATION. SO IN THAT REGARD, IF I ASK YOU A
11 QUESTION THAT YOU DON'T UNDERSTAND, WILL YOU LET ME KNOW THAT
12 YOU DO NOT UNDERSTAND THE QUESTION BEFORE YOU ATTEMPT TO
13 ANSWER IT?

14 A. SURE.

15 Q. OKAY. NOW, IT'S MY UNDERSTANDING FROM YOUR
16 TESTIMONY TODAY THAT YOU WERE BORN AND RAISED IN GREENSBORO?

17 A. YES.

18 Q. THAT'S WHERE CHRIS POPE'S FROM ORIGINALLY, ISN'T
19 HE?

20 A. I DON'T KNOW.

21 Q. YOU DON'T KNOW, OKAY. NOW, YOU PURCHASED A
22 CENTER CONSOLE TRITON, A BAY BOAT, FROM BOATS UNLIMITED IN
23 FEBRUARY OF 2006, IS THAT CORRECT?

24 A. YES.

25 Q. BEFORE THAT DATE, YOU HAD BEEN FISHING WITH

1 CHRIS POPE A FEW TIMES, JUST TO SEE HOW THE BOAT OPERATED OR
2 THE TRITON BOATS, CORRECT?

3 A. YES.

4 Q. AND YOU HAD GONE FISHING OVER AT CAPE LOOKOUT AT
5 THE ROCK JETTY?

6 A. YES.

7 Q. WHERE DID YOU-ALL DEPART FROM ON THAT FISHING
8 TRIP?

9 A. THE SAME DOCK THAT WE LEFT WITH BEN.

10 Q. THERE AT OLDE TOWNE?

11 A. OLDE TOWNE, UH-HUH.

12 Q. DID YOU GO OUT THE INLET ON THAT OCCASION?

13 A. YES.

14 Q. DO YOU KNOW HOW THE WEATHER WAS THAT DAY?

15 A. IT WAS NICE.

16 Q. A NICE DAY?

17 A. UH-HUH, YES.

18 Q. AND JUST WENT OUT THE INLET AND THEN HEADED
19 SOUTHEAST OVER TO THE CAPE?

20 A. ABOUT FIFTEEN MILES AN HOUR.

21 Q. THE BAY BOAT THAT YOU HAVE IS BASICALLY DESIGNED
22 FOR SHALLOW WATER, INSIDE FISHING, CORRECT?

23 A. YES, ALTHOUGH I'VE HAD IT AT BIG ROCK MULTIPLE
24 TIMES.

25 Q. NOW, DO YOU NORMALLY CHECK THE WEATHER BEFORE

1 YOU GO OUT FISHING?

2 A. YES.

3 Q. WOULD YOU TAKE YOUR BOAT THROUGH BEAUFORT INLET
4 WITH A SMALL CRAFT ADVISORY?

5 MR. JOHNSON: OBJECTION.

6 A. PROBABLY.

7 Q. YOU WOULD?

8 A. POTENTIALLY. I'VE DONE IT, I MEAN. DO YOU WANT
9 ME TO ELABORATE?

10 Q. YES, IF YOU WANT TO, GO AHEAD?

11 A. ON A NORTH WIND, THERE COULD BE A SMALL CRAFT
12 ADVISORY PAST TWENTY MILES OUT, BUT THE BEACHES WOULD BE
13 PROTECTED.

14 Q. NOW, THE BEACHES WOULD BE PROTECTED FROM A NORTH
15 WIND . . .

16 A. NOT THE INLET.

17 Q. BUT THE INLET WOULD NOT BE?

18 A. RIGHT.

19 Q. WHAT WOULD DETERMINE THE INLET WOULD BE THE WIND
20 DIRECTION PREVIOUS TO THAT, CORRECT?

21 A. YES.

22 Q. I BELIEVE YOU SAID ON THIS DAY THAT THE SWELLS
23 WERE COMING STRAIGHT IN THE INLET?

24 A. I DON'T REMEMBER IF IT WAS A NORTH OR SOUTH
25 WIND, BUT THE WAVES WERE PARALLEL WITH THE BEACH OR

1 PERPENDICULAR WITH THE INLET.

2 Q. DO YOU RECALL WHAT THE STATE OF THE TIDE WAS?

3 A. IT WAS FALLING.

4 Q. FALLING?

5 A. YES.

6 Q. DO YOU RECALL WHETHER IT WAS JUST THE BEGINNING
7 OF THE FALLING TIDE, THE MIDDLE OF THE FALLING TIDE, OR THE
8 BOTTOM OF THE FALLING TIDE?

9 A. I DON'T REMEMBER EXACTLY, OTHER THAN THE WAVES
10 SEEMED TO BE PRETTY SHORT, WHICH WOULD LEAD ME TO BELIEVE
11 THAT IT WAS RIGHT IN THE MIDDLE OF A FALLING TIDE.

12 Q. DO YOU KNOW WHAT THE CURRENT VELOCITY WAS IN
13 BEAUFORT INLET AT THAT TIME?

14 A. I HAVE NO IDEA.

15 Q. WOULD YOU ESTIMATE IT TO BE A KNOT OR MORE THAN
16 A KNOT?

17 A. I REALLY WASN'T PAYING THAT CLOSE OF ATTENTION
18 TO THAT.

19 Q. YOU KNOW IT WAS A WINDY DAY, YOU DIDN'T CHECK
20 THE WEATHER FORECAST. WHEN YOU LEFT THE DOCK, DOCTOR HINES
21 WAS OPERATING THE VESSEL?

22 A. YES.

23 Q. HE OPERATED IT FROM THE TIME YOU LEFT THE DOCK
24 AT OLDE TOWNE, YOU LEFT THE DOCK AT OLDE TOWNE AND YOU WENT
25 THROUGH BULKHEAD CHANNEL OUT TO THE MOREHEAD SHIPPING

1 CHANNEL, DID YOU NOT?

2 A. YES.

3 Q. WHEN YOU REACHED THE MOREHEAD SHIPPING CHANNEL,
4 TURNED TO PORT, AND FOLLOWED THE MOREHEAD SHIPPING CHANNEL
5 TOWARDS SHACKLEFORD BANKS?

6 A. YES.

7 Q. I BELIEVE YOU TESTIFIED THAT BEN OPERATED THE
8 BOAT INLAND OF THE INLET OVER TO SHACKLEFORD?

9 A. YES.

10 Q. SO BASICALLY HE CONTINUED IN THE
11 DIRECTION - PRETTY MUCH THE SAME AS THE DIRECTION HE HAD
12 TAKEN FROM THE MOREHEAD SHIPPING CHANNEL, DIDN'T MAKE A RIGHT
13 TURN OUT OF THE SHIPPING CHANNEL TO HEAD OUT OF THE INLET,
14 AND PROCEEDED OVER TO SHACKLEFORD?

15 A. HE MADE SEVERAL TURNS, SHARP TURNS, IN AND
16 AROUND THAT AREA, BUT NEVER OUT TOWARD THE INLET.

17 Q. AFTER DOCTOR HINES EXITED BULKHEAD CHANNEL, DID
18 HE PUT THE BOAT UP ON A PLANE?

19 A. YES.

20 Q. SO YOU PLANED THROUGH THE MOREHEAD SHIPPING
21 CHANNEL INSIDE OF THE INLET, I BELIEVE YOU INDICATED INLAND
22 OF THE INLET?

23 A. YES.

24 MR. JOHNSTON: OBJECTION, LEADING.

25 Q. IS THAT CORRECT?

1 MR. WEEKS: I THINK I MAY LEAD SINCE HE'S YOUR
2 WITNESS.

3 A. YES, WE WERE - YES.

4 Q. WHEN DOCTOR HINES WAS OPERATING THE VESSEL, YOU
5 WERE PROBABLY HALF A MILE FROM THE INLET, FROM THE AREA WHERE
6 THE ACCIDENT OCCURRED?

7 A. MAYBE CLOSER.

8 Q. YOU WENT OVER TO THE SHACKLEFORD AREA, AND HE
9 OPERATED THE VESSEL FOR A PERIOD OF TIME?

10 A. YES.

11 Q. I BELIEVE YOU INDICATED THAT THE VESSEL DIDN'T
12 RIDE VERY WELL?

13 A. YES, PARTLY SARCASTIC, YES.

14 Q. THAT WAS WHAT YOU TESTIFIED . . .

15 A. I SAID - YES, OBVIOUSLY.

16 Q. IT DIDN'T RIDE WELL BECAUSE THE BOW WANTED TO
17 PORPOISE, DIDN'T IT, WHILE DOCTOR HINES WAS OPERATING IT?

18 A. YES.

19 Q. DO YOU RECALL DOCTOR HINES COMMENTING ABOUT HE
20 WAS HAVING DIFFICULTY HANDLING THE BOAT TO TRY TO KEEP IT
21 FROM PORPOISING, AND THAT'S WHY HE TURNED THE HELM OVER TO
22 JOHN HYDE?

23 A. I DON'T RECALL.

24 Q. WHERE WERE YOU LOCATED IN THE BOAT WHEN YOU LEFT
25 THE DOCK AT OLDE TOWNE?

1 A. AS I REMEMBER IT, I WAS STANDING ON THE OTHER
2 SIDE. I WAS ON ONE SIDE OF THE CONSOLE UNTIL THE POINT WE
3 WENT THROUGH THE - STARTED GOING THROUGH THE INLET WHERE I
4 WENT TO THE BACK OF THE BOAT.

5 Q. THE POINT WHEN YOU'RE REFERRING TO STARTING
6 GOING THROUGH THE INLET, THAT'S WHEN JOHN HYDE WAS OPERATING
7 THE BOAT?

8 A. RIGHT.

9 Q. SO YOU WERE ON THE OPPOSITE SIDE OF THE CONSOLE
10 WHILE DOCTOR HINES WAS OPERATING THE BOAT?

11 A. AS I REMEMBER IT.

12 Q. DOCTOR HINES WAS AT THE HELM, YOU WERE ON THE
13 STARBOARD SIDE, AND JOHN HYDE WAS ON THE PORT SIDE, IS THAT
14 WHAT YOU RECALL?

15 A. I CAN'T SAY IF I WAS ON THE RIGHT OR ON THE PORT
16 OR STARBOARD, BUT I BELIEVE I WAS ON THE SIDE.

17 Q. DO YOU RECALL BEING FORWARD OF THE CONSOLE WHILE
18 DOCTOR HINES WAS REPRESENTING THE BOAT?

19 A. YES.

20 Q. WERE YOU STANDING OR SEATED?

21 A. STANDING.

22 Q. ONCE JOHN HYDE TOOK OVER OPERATION OF THE BOAT,
23 DID HE TELL YOU WHERE HE WAS GOING OR ANYTHING?

24 A. NO.

25 Q. HE JUST TOOK THE BOAT - LET ME BACK UP. WHEN HE

1 TOOK OVER OPERATION OF THE BOAT, WAS THE BOAT UNDERWAY, WAS
2 IT MAKING WAY?

3 A. IT WAS PROBABLY MAKING SOME WAY.

4 Q. IT WAS AT IDLE SPEED?

5 A. YES.

6 Q. THEN ONCE HE TOOK OVER THE BOAT, HE POWERED THE
7 BOAT UP?

8 A. YES.

9 Q. YOU INDICATED YOU THOUGHT UNDER TWENTY MILES PER
10 HOUR?

11 A. WE WERE GOING UNDER TWENTY MILES AN HOUR AT THE
12 TIME OF THE ACCIDENT.

13 Q. NOW, COULD YOU SEE THE SPEEDOMETER ON THIS BOAT
14 AT THE TIME OF THE ACCIDENT?

15 A. NO.

16 Q. IF DOCTOR HINES SAW THE SPEEDOMETER AND SAID
17 THAT IT WAS RUNNING TWENTY-FIVE MILES PER HOUR WHEN JOHN HYDE
18 MADE THE PORT TURN TO HEAD TOWARDS THE INLET, WOULD YOU
19 DISAGREE WITH THAT?

20 MR. JOHNSTON: I WANT TO MAKE AN OBJECTION,
21 BECAUSE HE DIDN'T SAY THAT, IT'S NOT HIS TESTIMONY.

22 Q. IF HIS TESTIMONY IS THAT IT WAS GOING TWENTY-
23 FIVE MILES PER HOUR, WOULD YOU DISAGREE WITH THAT?

24 A. REPEAT THE QUESTION.

25 Q. IF DOCTOR HINES' TESTIMONY WAS, AS HE WAS

1 LOOKING AT THE SPEEDOMETER ON THE CONSOLE OF THE VESSEL WHILE
2 JOHN HYDE WAS OPERATING THE BOAT AND IT WAS SOMEWHERE IN THE
3 RANGE OF TWENTY-FIVE MILES AN HOUR, WOULD YOU DISAGREE WITH
4 THAT?

5 A. ARE YOU SAYING AT THE TIME OF THE ACCIDENT OR
6 JUST IN GENERAL?

7 Q. WHEN HE WAS OPERATING THE BOAT?

8 MR. JOHNSTON: OBJECTION.

9 A. AT ANYTIME DURING - WHEN HE WAS OPERATING THE
10 BOAT?

11 Q. WHEN HE MADE THE LEFT TURN TO HEAD OUT THE
12 INLET?

13 A. OKAY.

14 Q. WOULD YOU DISAGREE WITH THAT?

15 A. NOT NECESSARILY, NO. BUT IF YOU ARE ASKING ME
16 IF THE BOAT WAS ON PLANE AT THE TIME OF THE ACCIDENT, I WOULD
17 SAY NO.

18 Q. DID JOHN HYDE SLOW THE BOAT DOWN AFTER HE MADE
19 THE LEFT TURN BEFORE THE ACCIDENT?

20 A. HE SLOWED DOWN, TURNING, AS HE WAS GOING OUT OF
21 THE INLET.

22 Q. HOW LONG AFTER HE MADE THE PORT TURN WAS IT
23 BEFORE THE INCIDENT HAPPENED?

24 A. I CAN'T SAY.

25 Q. YOU'VE INDICATED IN YOUR OPINION THE HEIGHT OF

1 THE WAVES WAS 2 TO 3 FEET?

2 A. YES.

3 Q. IF JOHN HYDE, IN HIS OPINION, SAID THE WAVES
4 WERE 3 TO 4 FEET, WOULD YOU DISAGREE WITH THAT?

5 A. NO.

6 Q. IF DOCTOR HINES SAID, IN HIS OPINION, THE WAVES
7 WERE 4 FEET PLUS, WOULD YOU DISAGREE WITH THAT?

8 A. I WOULD BE OKAY WITH 4, 5 MIGHT BE STRETCHING
9 IT, TO ME.

10 Q. IF THE WAVES WERE 4 FEET AND YOU HAVE A FALLING
11 TIDE WITH AN OUTGOING CURRENT, THAT TENDS TO STAND THE WAVES
12 UP, DOESN'T IT?

13 MR. JOHNSTON: OBJECTION.

14 A. ABSOLUTELY.

15 Q. IF YOU HAVE THE WAVES COMING FROM THE SOUTH IN
16 THE INLET AND YOU HAVE A WIND BLOWING OUT OF THE NORTH, THAT
17 ALSO TENDS TO STAND THE WAVES UP, DOESN'T IT?

18 A. YES.

19 Q. AND IT MAKES THE WAVES MORE PEAKY, DOESN'T IT?

20 A. YES.

21 Q. WHEN YOU WERE GOING OUT OF THE INLET, AT WHAT
22 POINT DID YOU MOVE FROM BESIDE THE CONSOLE TO BEHIND THE
23 LEANING POST?

24 A. PROBABLY WHEN WE STARTED BOUNCING.

25 Q. I'M GOING TO SHOW YOU WHAT I'VE MARKED AS

1 PLAINTIFF'S EXHIBIT [28], THAT'S A PHOTOGRAPH OF THE VESSEL,
2 I'M GOING TO ASK YOU TO LOOK AT THAT, PLEASE?

3 A. OKAY.

4 Q. DOES THAT PHOTOGRAPH SHOW THE VESSEL FROM THE
5 STERN LOOKING FORWARD?

6 A. YES.

7 MR. JOHNSTON: MAY I SEE IT, PLEASE?

8 MR. WEEKS: YES, SIR.

9 MR. JOHNSTON: WERE THESE PREVIOUSLY PRODUCED?

10 MR. WEEKS: YES.

11 MR. JOHNSTON: I THOUGHT THEY WERE EARLIER
12 EXHIBITS, THAT'S WHY.

13 MR. WEEKS: NO, THEY'RE DIFFERENT NUMBERS. THEY
14 WERE EARLIER EXHIBITS.

15 Q. DOES THAT PHOTOGRAPH SHOW THE LEANING POST SEAT
16 THAT YOU REFERRED TO?

17 A. YES.

18 Q. DOES IT SHOW THE CONSOLE?

19 A. YES.

20 Q. DOES IT SHOW THE POSITION OF THE OPERATOR?

21 A. YES.

22 Q. AND DOES IT SHOW THE T-TOP?

23 A. YES.

24 Q. I'M GOING TO ASK YOU, IF YOU WOULD, HOLD THAT UP
25 TOWARD THE CAMERA, AND CAN YOU POINT OUT WHERE THE CONSOLE IS

1 LOCATED?

2 A. (INDICATING ON EXHIBIT.)

3 Q. AND THE GENTLEMAN STANDING THERE, IS HE IN THE
4 POSITION OF THE OPERATOR?

5 A. YES.

6 Q. CAN YOU POINT OUT WHERE YOU WERE STANDING WHEN
7 THE VESSEL STARTED GOING OUT OF THE INLET, BEFORE YOU MOVED
8 TO THE STERN?

9 A. I THINK I WAS OVER HERE - (INDICATING.)

10 Q. AS THE VESSEL STARTED GOING OUT OF THE INLET AND
11 STARTED BOUNCING, YOU MOVED FROM THERE BACK AFT?

12 A. RIGHT.

13 Q. WHY DID YOU MOVE FROM BESIDE THE CONSOLE BACK
14 AFT?

15 A. BECAUSE WE WERE BOUNCING.

16 Q. A VESSEL, IF YOU'RE GOING INTO A HEAD SEA, RIDES
17 MORE COMFORTABLE IN THE STERN THAN IT DOES FORWARD, DOESN'T
18 IT?

19 A. YES.

20 Q. THE STERN DOESN'T TEND TO BOUNCE AS MUCH AS THE
21 FORWARD PART OF THE VESSEL?

22 A. RIGHT.

23 Q. SO WHEN THE VESSEL STARTED BOUNCING, YOU MOVED
24 AFT TO A POSITION OF SAFETY, DIDN'T YOU?

25 A. YES.

1 Q. WHEN YOU MOVED - I'M GOING TO SHOW YOU WHAT IS
2 MARKED AS EXHIBIT [27], AND ASK YOU TO LOOK AT THAT.

3 A. (PAUSE - PERUSES EXHIBIT.)

4 Q. TURN IT A LITTLE MORE OBLIQUE.

5 A. OKAY.

6 Q. DOES THAT PHOTOGRAPH SHOW THE GENERAL POSITION
7 THAT DOCTOR HINES WAS LOCATED IN AS THE VESSEL WAS GOING
8 THROUGH THE INLET?

9 A. HE WAS STANDING THERE, AS I REMEMBER IT, I
10 THOUGHT HE WAS FACING BACKWARDS.

11 Q. FACING TOWARDS THE CONSOLE?

12 A. YES, BUT . . .

13 Q. THE GENERAL AREA?

14 A. THAT'S THE AREA HE WAS STANDING.

15 Q. AND HE WAS HOLDING ON TO THE T-TOP, WASN'T HE?

16 A. YES.

17 Q. OR THE SUPPORTS?

18 A. YES.

19 Q. AND YOU WERE STANDING WHERE, CAN YOU POINT OUT
20 WHERE YOU WERE STANDING?

21 A. I WAS STANDING RIGHT THERE - (INDICATING.)

22 MR. JOHNSTON: COULD YOU DO THAT AGAIN, I DIDN'T
23 SEE?

24 A. I WAS STANDING RIGHT THERE - (INDICATING.)

25 Q. SO YOU WERE STANDING BEHIND THE OPERATOR?

1 A. RIGHT.

2 Q. AND THE OPERATOR'S BODY WOULD SOMEWHAT OBSTRUCT
3 YOUR VIEW FORWARD, WOULDN'T IT?

4 A. YES.

5 Q. YOU COULD SEE BETTER OFF TO THE STARBOARD, YOU
6 COULDN'T SEE VERY WELL STRAIGHT AHEAD, BECAUSE OF THE
7 OPERATOR, YOU COULDN'T SEE VERY WELL TO THE PORT BECAUSE OF
8 DOCTOR HINES . . .

9 MR. JOHNSTON: OBJECTION TO THE FORM.

10 Q. IS THAT CORRECT?

11 A. YES.

12 Q. I'M GOING TO SHOW YOU WHAT I'VE MARKED AS
13 EXHIBIT [26], AND ASK YOU TO LOOK AT THAT.

14 A. (PAUSE - PERUSES EXHIBIT.)

15 Q. IS THAT A PHOTOGRAPH OF THE STERN AREA OF THIS
16 VESSEL, SHOWING THE LEANING POST SEAT AND HOW CLOSE IT IS TO
17 THE TRANSOM?

18 A. YES.

19 Q. CAN YOU POINT OUT, IN THAT PHOTOGRAPH, WHERE YOU
20 WERE STANDING?

21 A. RIGHT THERE, BEHIND THAT - (INDICATING.)

22 Q. WERE YOU HOLDING ON TO ANYTHING?

23 A. THE HANDRAIL THAT YOU CAN'T SEE.

24 Q. CAN YOU SHOW US THE HANDRAIL?

25 A. THAT HANDRAIL - (INDICATING.)

1 Q. NOW, I BELIEVE YOU TESTIFIED EARLIER THAT WITH
2 EVERY WAVE YOU HIT, THE BOW WAS RAISING UP AND WAS HITTING
3 HARD?

4 A. YES.

5 Q. WAS THE BOW HITTING HARD WHEN YOU WERE STRIKING
6 THE WAVE OR WAS IT HITTING HARD WHEN YOU WERE COMING OFF THE
7 BACKSIDE OF THE WAVE?

8 A. WHEN WE WERE LANDING. WE WEREN'T COMING OFF THE
9 BACK, IT WAS THE BOW WOULD STILL BE - I MEAN, THE STERN WOULD
10 STILL BE ON THE WAVE, IT WAS THE BOW THAT WAS BOUNCING IN THE
11 TROUGH OF THE WAVE.

12 Q. SO AS YOU WERE GOING UP THE FACE OF THE WAVE AT
13 APPROXIMATELY TWENTY MILES AN HOUR . . .

14 MR. JOHNSTON: OBJECTION.

15 A. I WOULD SAY UNDER TWENTY MILES AN HOUR.

16 Q. . . . THE BOW - AS THE STERN WAS STILL UP NEAR
17 THE PEAK OF THE WAVE, THE BOW WOULD DROP FORCEFULLY INTO THE
18 TROUGH, IS THAT CORRECT?

19 MR. JOHNSTON: OBJECTION TO FORM.

20 A. IT WOULD BOUNCE INTO EITHER THE FACE OF THE NEXT
21 WAVE OR DOWN THE TROUGH.

22 Q. AND YOU HIT SEVERAL WAVES LIKE THAT BEFORE
23 DOCTOR HINES WAS THROWN DOWN, CORRECT?

24 MR. JOHNSTON: OBJECTION TO THE FORM.

25 A. YES.

1 Q. JOHN HYDE, WHEN YOU STARTED STRIKING THOSE
2 WAVES, DIDN'T SLOW THE BOAT, DID HE?

3 MR. JOHNSTON: OBJECTION TO THE FORM.

4 A. HE WAS ALREADY GOING SLOW.

5 Q. HOW SLOW WAS HE GOING?

6 A. HE WASN'T ON PLANE.

7 Q. HE WASN'T ON PLANE?

8 A. NOT ON PLANE.

9 Q. BUT SOMEWHERE AROUND TWENTY MILES AN HOUR?

10 MR. JOHNSTON: OBJECTION TO THE FORM.

11 A. UNDER TWENTY MILES AN HOUR.

12 Q. UNDER TWENTY, WAS HE OVER FIFTEEN OR DO YOU
13 KNOW?

14 A. IN MY OPINION, I THINK HE WAS PROBABLY GOING
15 ABOUT FIFTEEN, BUT I COULDN'T SAY.

16 Q. YOU COULDN'T SEE THE SPEEDOMETER?

17 A. IF WE WOULD HAVE BEEN ON PLANE - I FEEL LIKE IF
18 WE WERE GOING TWENTY OR OVER, WE WOULD HAVE BEEN SKIPPING
19 ALONG THE TOP OF THE WAVES, AND WE WERE HITTING - WE CAUGHT
20 EVERY PART OF EVERY WAVE.

21 Q. NOW, ON THE WAVE THAT DOCTOR HINES WAS THROWN
22 DOWN ON, THE BOW OF THE BOAT WENT HIGHER ON THAT WAVE THAN
23 THE PREVIOUS WAVES, DIDN'T IT?

24 MR. JOHNSTON: OBJECTION TO THE FORM.

25 A. POTENTIALLY.